

Federal Communications Commission

DA 00-2014

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Amendment of Section 73.202(b),)	MM Docket No. 00-17
Table of Allotments,)	RM-9814
FM Broadcast Stations.)	
(Andalusia, Alabama and Holt, Florida))	

REPORT AND ORDER
(Proceeding Terminated)

Adopted: August 23, 2000

Released: September 1, 2000

By the Chief, Allocations Branch:

1. Before the Commission for consideration is the Notice of Proposed Rule Making, 15 FCC Rcd 2029 (2000), issued in response to a request filed on behalf of Capstar TX Limited Partnership ("petitioner"), licensee of Station WTKE(FM), Channel 251C1, Andalusia, Alabama, proposing the reallocation of Channel 251C1 to Holt, Florida, as that community's first local aural transmission service, and modification of its authorization accordingly. Petitioner filed supporting comments in response to the Notice. No other comments were filed.

2. This proposal is filed pursuant to Section 1.420(i) of the Commission's Rules. See Modification of FM and TV Authorizations to Specify a New Community of License ("Change of Community"), 4 FCC Rcd 4870 (1989), recon. granted in part, 5 FCC Rcd 7094 (1990). This would enable petitioner to provide Holt, an unincorporated community that is not within an urbanized area, with its first local aural transmission service and would not leave Andalusia devoid of local broadcast service. The proposed reallocation of Channel 251C1 to Holt, Florida, is mutually exclusive with its existing authorization at Andalusia, Alabama. The distance between Andalusia and the petitioner's specified site at Holt is 3.2 kilometers (2 miles) whereas a minimum distance of 245 kilometers (152 miles) is required in this instance. As stated in the Notice, Station WTKE presently provides 60 dBu coverage to less than 50% of the Pensacola urbanized area while covering virtually the entire Fort Walton Beach urbanized area. However, as the 70 dBu contour of Station WTKE does not reach any urbanized area, the petitioner was not required to submit a Tuck analysis to demonstrate that Holt is sufficiently independent from the noted urbanized areas to warrant a first local service preference.¹

3. The Notice also advised that while the reallocation would result in a loss of population coverage to 45,116 persons within Station WTKE's 60 dBu contour, the proposed reallocation site for Channel 251C1 at Holt will provide service to 336,697 persons in an area of 16,422 square

¹ See Huntington Broadcasting Co. v. F.C.C., 192 F.2d 33 (D.C. Cir. 1951), RKO General, Inc., 5 FCC Rcd 3222 (1990), and Faye and Richard Tuck, 3 FCC Rcd 5374 (1988).

kilometers and result in 4,267 persons gaining a new service. Both the gain and loss areas receive five or more aural reception services and are considered well served.

4. Additionally, as Holt is not incorporated, the Notice requested petitioner to provide additional information beyond that presented in its proposal to demonstrate whether it is a bona fide community for allotment purposes. Further, petitioner was requested to clarify Holt's population and identify the official information source.²

5. Petitioner's responsive comments agree that Holt's population, as reported by the Commission in the Notice is 1,821 persons, as listed in the 1990 U.S. Census, rather than the smaller population listed in its proposal. Petitioner further advises that a recent population estimate by the local Holt Postmaster reflects a substantial increase in residents from the 1990 Census estimate, based upon street delivery to 692 homes, as well as to 425 post office boxes, for a combined estimated population of 3,351 individuals. In addition to its own post office and zip code (32564), petitioner reports that Holt has a volunteer fire department, several churches, schools, civic and social organizations (such as the Holt Community Center and the Holt Ruritan Club), as well as approximately twenty-nine businesses that are identified by their street address and telephone number. Further, petitioner provided photographs depicting a highway sign signifying the Holt border, as well as signs for the co-located community center, Holt Water Works, Inc., the Holt Volunteer Fire Department, the Holt Industrial Park, Holt Assembly of God Church, and the Holt Airport Field. Petitioner also provided testimonials from Holt residents attesting to their perception and belief that Holt is a separate and distinct community for allotment purposes.

6. Based upon the information provided, we believe that the petitioner has sufficiently demonstrated that Holt is a community for allotment purposes. Therefore, we believe the public interest would be served by granting the petitioner's proposal as it will result in a preferential arrangement of allotments as required by the Commission's Change of Community procedures, supra. Applying those procedures we compare the existing arrangement of allotments with the proposal using the FM allotment priorities contained in the Revision of FM Assignment Policies and Procedures ("Revision"), 90 FCC Rcd 88 (1982). The first two allotment priorities are not applicable in this instance. Holt, which is not within nor adjacent to an urbanized area, will receive its first local aural transmission service (priority 3) and is favored over retaining Channel 251C1 at Andalusia, Alabama (priority 4). Additionally, Andalusia will continue to receive local transmission service provided by Station WAAO-FM, Channel 279A, and Station WSTF, Channel 218A. Therefore, in accordance with the provisions of Section 1.420(i) of the Commission's Rules, we will modify the license for Station WTKE to specify operation on Channel 251C1 at Holt, Florida, in lieu of Anniston, Alabama.

² Petitioner's proposal stated that Holt has a population of 400 according to the 1999 Rand McNally *Commercial Atlas and Marketing Guide*, whereas the 1990 U.S. Census lists Holt by its post office name with a population of 1,821 persons.

7. As stated in the Notice, Channel 251C1 can be allotted to Holt, Florida, consistent with the technical requirements of the Commission's Rules at the petitioner's specified transmitter site located 32.2 kilometers north of the community at coordinates 30-59-57 NL and 86-41-20 WL.

8. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective October 16, 2000, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED with respect to the communities listed below, as follows:

<u>City</u>	<u>Channel No.</u>
Andalusia, Alabama	279A
Holt, Florida	251C1

9. IT IS FURTHER ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, the license of Capstar TX Limited Partnership for Station WTKE(FM), IS MODIFIED to specify operation on Channel 251C1 at Holt, Florida, in lieu of Anniston, Alabama, subject to the following conditions:

- (a) Within 90 days of the effective date of this Order, the licensee shall submit to the Commission a minor change application for a construction permit (Form 301), specifying the new facility;
- (b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620; and
- (c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental assessment pursuant to Section 1.1307 of the Commission's Rules.

10. Pursuant to Commission Rule Section 1.1104(1)(k) and (3)(m) of the Commission's Rules, any party seeking a change in community of license of a television or FM allotment or an upgrade of an existing FM allotment, if the request is granted, must submit a rule making fee when filing its application to implement the change in community of license and/or upgrade. As a result of this proceeding, Capstar TX Limited Partnership, licensee of Station WTKE(FM), is required to submit a rule making fee in addition to the fee required for the applications to effect the change in community of license at Holt, Florida.

11. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

12. For further information concerning the above, contact Nancy Joyner, Mass Media Bureau, (202) 418-2180.

FEDERAL COMMUNICATIONS COMMISSION

**John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau**